



# Wisconsin Insurance News

2005 Special Edition

## Commissioner Gomez Reminds Agents of Upcoming Medicare Changes



By Jorge Gomez,  
Commissioner  
of Insurance

**T**he implementation date of January 1, 2006, for Medicare reform is rapidly approaching.

The reform affects both Medicare and Medicare supplement insurance. Many Wisconsin insurers have announced plans to participate in the new Medicare prescription drug program and are busy hiring staff to help market the new products. However, past experience shows us that a small minority of agents use the access offered through changes in the Medicare program as an opportunity to convince enrollees to purchase other insurance or financial products that may be unsuitable. I want to emphasize in the strongest possible terms that OCI will aggressively enforce existing suitability laws for other products marketed to the Medicare population.

Upcoming changes to Medicare and Medicare supplement insurance are described in greater detail in this issue of the *Wisconsin Insurance News*.

I encourage you to familiarize yourself with the new options that are available. In summary, the changes include a variety of new private plans for consumers to choose among and a new drug benefit. The private plans are also known as Medicare Advantage and include a variety of managed care

options for consumers and may also include the Medicare prescription drug coverage as an option. Medicare Advantage replaces the Medicare + Choice program. Insurers will be allowed to market the prescription drug plan starting October 1 and can begin enrolling participants on November 15.

Wisconsin has had standardized benefits for traditional Medicare supplement plans for many years. Included in the benefits was a catastrophic prescription drug benefit. This benefit must be removed from the policy for all sales after January 1, 2006. In addition, insurers must send notices to Medicare supplement policyholders informing them of their options to keep the Medicare supplemental drug coverage or enroll in a Medicare prescription drug plan. Standardized benefits allow for consumers to easily compare among the various insurance plans and make a decision based on issues such as price. Standardized benefits are not part of the Medicare Advantage plans and marketing the new plans will offer the opportunity for agents to talk with consumers about benefits, pricing and availability of providers.

Many of our senior citizens will be inundated with information about new programs that are available, especially the prescription drug plan, and will turn to the agent community for assistance. Past history has shown us that a few unscrupulous agents will take advantage of this opportunity for

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## Caution: Know Suitability Law

A Wisconsin intermediary agent is required by law to make a determination of the suitability of a purchase or replacement of an individual life insurance product or annuity before making a recommendation to a prospective buyer. In order to comply with s. Ins 2.16 (6), Wis. Adm. Code, the intermediary must make all necessary inquiries under the circumstances to determine that the purchase or replacement is not unsuitable for the prospective buyer. Both OCI and insurers are emphasizing supervision and appropriate disciplinary actions to enforce this requirement.

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## Continuing Education Basic Requirements

All agents who hold a license in any of the major lines of property, casualty, personal line P&C, life, accident and health insurance, or the limited line of automobile, must meet the continuing education requirements. Your compliance date is printed on your license.

**Course credits may be completed at any time during the two-year period.** Carry-over of credits from one reporting period to another is not allowed.

Reminder: If you completed your requirements prior to January 1, 2005, for the 2003-2005 reporting period, classes you completed after January 1 were automatically banked for the 2005-2007 reporting period.

A list of approved providers and courses is available at Promissor's Web site through a link at OCI's Web site by logging on to [oci.wi.gov](http://oci.wi.gov), then clicking on "Agent," then "Promissor." Or, log on directly to [www.promissor.com](http://www.promissor.com).

Contact Promissor for answers to general questions, to gain information on course availability and to confirm if credits have been banked in an agent's individual record. They may be reached at (800) 274-4679. *Reminder: Dial (800) prefix whenever using this number.*

## Commissioner Gomez Reminds Agents of Upcoming Medicare Changes

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access to the senior community. Cross-selling of other insurance products must conform to state requirements. That includes existing administrative code regulating marketing of insurance products and new statutory requirements to perform suitability analysis for certain annuity products. We now have stricter suitability rules and agents need to act accordingly.

It is our expectation that agents who may be marketing both Medicare Advantage and prescription drug products at the same time or are selling other products are following the marketing guidelines in s. Ins 3.27 and 20.01, Wis. Adm. Code. Those requirements include clearly stating that you are an insurance agent and selling an insurance product. You must also notify the client when you have changed from marketing a Medicare Advantage or prescription drug product to another insurance product. The Center for Medicare and Medicaid Services (CMS) has also issued guidelines for marketing Medicare Advantage and prescription drug products that are available on its Web site.

According to CMS, only state-licensed insurance producers may engage in marketing activity. Thus, state law and regulatory provisions regarding producer activity apply to Medicare Part D. CMS has received complaints about alleged misconduct by licensed producers with regard to Medicare Part D marketing. CMS will refer complaints it receives about producers licensed in this state to OCI.

Remember, your agent status is affected by more than your insurance business conduct. Section 628.10 (2) (b), Wis. Stat., states “the commissioner may revoke, suspend or limit in whole or in part the license of any intermediary if the commissioner finds that the licensee is unqualified as an intermediary, is not of good character or has repeatedly or knowingly violated an insurance statute or rule or valid order of the commissioner under s. 601.41 (4), or if the intermediary’s

methods and practices in the conduct of business endanger, or financial resources are inadequate to safeguard, the legitimate interests of customers and the public.”

Suitability requirements for annuity products were implemented by the Wisconsin Legislature in 2004. Agents are required to know and understand the suitability standards adopted by their companies for any annuity they may be marketing. Insurers that offer annuities, likewise, are required to supervise their appointed agents to

ensure their sales are suitable.

Agents are encouraged to share with OCI any information they may have regarding inappropriate marketing of Medicare products by other agents.

OCI retains authority over marketing of Medicare supplement and other insurance products. I continue to believe in OCI’s obligation to protect our senior citizens and will not hesitate to take action against those who may take advantage of them during this time of change.

## Wisconsin Suitability Law

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OCI has issued a number of enforcement actions involving suitability issues. Penalties have included revocation, forfeiture, restitution, summary suspension or criminal conviction.

Enforcement actions issued include: John Aijala, Jerry Asslein, Steven Conklin, Gregory Dudzik, Lasantha Fernando, Thomas Hinneberg, Thomas Mikunda, Vikram Maik, Marvin Sedlet and Mark Sirianni.

Insurers who offer annuities to senior consumers (over age 64) are required under s. 628.347, Wis. Stat., to establish and maintain a system to supervise the recommendations made by their intermediaries that is designed to achieve compliance with the law and which will assist in detecting and preventing suitability violations. OCI is actively monitoring insurers to ensure that they are taking this supervision requirement seriously.

If a prospective buyer is a senior consumer, the intermediary must comply with the provisions of s. 628.347, Wis. Stat., before making a recommendation with respect to purchase or exchange of a fixed or variable annuity.

Any recommendation for purchase or exchange of an insurance product by an agent should be based upon relevant information obtained from a reasonable inquiry which will assist the prospective buyer to meet his or her insurance needs and financial objectives. There is much more to suitability than merely determining whether a premium source is available. Reasonable efforts should be made to determine the prospective buyer’s financial status, tax status, insurance needs, investment objectives and any other information that is appropriate for

determining suitability of a recommendation.

Under the “any other information” category, an intermediary should consider the prospective buyer’s current status, including such things as age, marital status, dependents, occupation, health and mental status. The intermediary should also take into account the buyer’s needs and goals, including existing insurance and investments, nature and extent of prior investment experience, stated risk tolerance, liquidity and income needs, stated insurance needs and goals and existing estate plans.

The intermediary should take the time and effort to assess whether the prospective buyer’s life insurance needs have already been adequately met, the customer has indicated a preference for an investment other than an insurance product, the customer has the ability to fully understand the insurance product including surrender charges and an appreciation of the allocation of the premium to cover insurance and other costs and whether the customer has the ability to monitor the performance of the product. The intermediary must exercise caution to avoid excessive product replacements and refrain from misstatements of material fact in comparing the respective merits and costs of existing and proposed insurance products.

In summary, Wisconsin intermediaries would well be advised to assess a wide range of suitability factors before making a recommendation, evaluate the proposed insurance product’s relationship to customer needs and objectives, document the information used to reach a recommendation and how the information was used and disclose the basis for each recommendation and the product’s features, benefits and costs to the customer.

## Changes in Medicare Affecting Wisconsin Residents

The federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) mandated the offer of optional new prescription drug benefits for people with Medicare Part A and Part B coverage and required that all states amend their insurance laws to comply with the specific provisions of the MMA.

The new prescription drug benefits include optional temporary Medicare approved discount cards covering some outpatient prescription drugs. This program ends on January 1, 2006. The act also provides that beginning November 15, 2005, Medicare beneficiaries can apply for the Medicare Part D outpatient prescription drug program which becomes effective January 1, 2006.

The Medicare Part D outpatient prescription drug coverage will be provided by private entities that contract with the CMS to offer prescription drug plan (PDP) coverage. Medicare beneficiaries may choose among the PDPs that are available in their area. Each PDP will cover some core prescription drugs but will construct a formulary of other covered drugs that may vary among the PDPs. A formulary is a listing of prescription medications that are covered by the PDP.

PDPs may charge a monthly premium and will cover only those prescription drugs included in their formulary. The monthly premium charged by the PDPs can increase over time as the cost of providing coverage increases. Also, PDPs may change the drugs covered under their formularies.

The MMA provides that it will assess a penalty for the Medicare beneficiaries who do not apply during the open-enrollment period between November 15, 2005, and May 15, 2006. The penalty is 1% of the base beneficiary premium per month for every month beneficiaries wait to enroll. The penalty only applies to Medicare beneficiaries without prescription drug coverage or who have outpatient drug coverage that is not actuarial equivalent to that under the Medicare Part D prescription drug program.

CMS estimates that the premium for PDPs will be around \$37. PDPs will have a \$250 deductible and a 25% coinsurance for drug expenses up to \$2,250. Enrollees

must pay 100% of their drug expenses from \$2,250 to \$5,100; this is referred to as the "donut hole." Out-of-pocket costs will total \$3,600. Coverage resumes for any drug costs above \$5,100, with a 5% coinsurance.

Wisconsin adopted amendments to its Medicare supplement rule, s. Ins 3.39, Wis. Adm. Code, that apply to Medicare supplement, cost policies (Medigap) issued or renewed beginning January 1, 2006. Section Ins 3.39, Wis. Adm. Code, has been amended to:

- Create two cost-sharing Medicare supplement policies and two cost-sharing Medicare select policies.
- Eliminate outpatient prescription drug coverage under existing Medigap policies after December 31, 2005, for those policyholders who apply for Medicare Part D PDPs.
- Prohibit the sale of outpatient prescription drug coverage under Medigap policies after December 31, 2005.
- Allow Medigap policyholders to renew and maintain the outpatient prescription drug coverage in their existing Medigap policies, if they choose not to enroll in Medicare Part D PDP plans.
- Expand guaranteed issue rights for individuals who lose medical assistance and for individuals who terminate coverage under an employee welfare benefit plan to enroll in Medicare Advantage but disenroll in Medicare Advantage within 12 months of enrollment.

In order to comply with the MMA, the amendments to s. Ins 3.39, Wis. Adm. Code, provide that Medigap policies issued beginning January 1, 2006, may not include any outpatient prescription drug coverage. Medigap policyholders who

have outpatient prescription drug coverage under policies issued prior to December 31, 2005, have several options:

- Continue with their current policy without loss of prescription drug coverage. (Insureds will be informed that if they choose this option, they will have to pay a "penalty" for future enrollment in Medicare Part D after the initial enrollment period.)
- Enroll in Medicare Part D and keep their current policy without prescription drug coverage.
- Enroll in Medicare Part D, drop their policy and elect to guarantee issue into Medigap policy from the same issuer.
- Enroll in Medicare Advantage (formerly Medicare + Choice) to obtain Medicare PDP coverage.

In order to comply with the MMA, the amendments to s. Ins 3.39, Wis. Adm. Code, affecting outpatient prescription drug coverage also apply to Wisconsin's mandate regarding equipment and supplies for the treatment of diabetes. Medigap policies issued after January 1, 2006, may not cover prescription medications, insulin or medical supplies associated with the injection of insulin for the treatment of diabetes. Medigap policies issued prior to January 1, 2006, to policyholders who choose to enroll in Medicare Part D will be amended with an exclusionary rider indicating that outpatient prescription drugs, including prescription medications for the treatment of diabetes, insulin and medical supplies associated with the injection of insulin are no longer covered. Medigap policies issued prior to January 1, 2006, to policyholders who choose not to enroll in Medicare Part D will continue to cover



## Senior Care Continuation Until June 2007

Governor Jim Doyle announced on October 11, 2005, that he had reached an agreement with the Centers for Medicare and Medicaid Services (CMS) to continue Wisconsin's Senior Care program until June 2007.

Senior Care is a prescription drug assistance program for Wisconsin residents. It provides benefits that may exclude those offered in the Medicare Part D Plan. Under the agreement with CMS, there will be no financial penalties

for seniors enrolled in Senior Care who enroll in Medicare Part D at a later date. For more information visit [oci.wi.gov/srissues.htm](http://oci.wi.gov/srissues.htm).

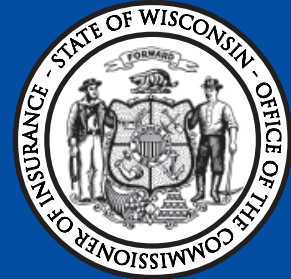
Other independent sources of information can be found at these Web sites:

- [www.dhfs.state.wi.us/seniorcare/index.htm](http://www.dhfs.state.wi.us/seniorcare/index.htm)
- [www.cwag.org](http://www.cwag.org)
- [www.medicare.gov](http://www.medicare.gov)

**Governor:**  
*Jim Doyle*

**Insurance Commissioner:**  
*Jorge Gomez*

**WIN Editors:**  
*Nick Verbeten*  
*Kristin Trampf*



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IMPORTANT RENEWAL  
INFORMATION IS  
ENCLOSED.**

## Changes in Medicare Affecting Wisconsin Residents

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equipment, supplies, including insulin and prescription medications as provided under Wisconsin's diabetes mandate.

The amendments to s. Ins 3.39, Wis. Adm. Code, also provide that insurers may offer Medicare supplement or Medicare select policies that supplement benefits on a 25% and 50% cost-sharing basis. These cost-sharing Medigap policies provide that the insurer pays only 75% or 50% of supplemental benefits historically covered by Medicare supplement or Medicare select policies and that the policyholder pays coinsurance of 25% or 50%. As a result of the addition of new cost-sharing plans, the existing Medicare supplement insurance high deductible plan and high deductible drug plan will no longer be permitted to be sold after December 31, 2005.

We encourage agents that market Medigap policies to periodically check the Web site [oci.wi.gov](http://oci.wi.gov) for updates regarding Medigap policies in Wisconsin. Questions regarding this article may be addressed to Diane Dambach at: [diane.dambach@oci.state.wi.us](mailto:diane.dambach@oci.state.wi.us).

## The WIN is Published Electronically

This issue of the WIN includes information previously published in the online edition of the WIN.

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